IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 19TH MARCH, 2007 / 28TH PHALGUNA, 1928

OP.No. 12135 of 2002(T)

PETITIONER:

RASHTRA DEEPIKA LTD. P.B.NO. 7,
KOTTAYAM, REPRESENTED BY ITS MANAGING DIRECTOR

BY ADV. SRI.J.JULIAN XAVIER
SRI.RAJESH THOMAS

RESPONDENTS:
---

1. LABOUR COURT, ERNAKULAM

2. V.P.HASSAN, KAVANAL VEEDU,
THODUPUZHA.P.O.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (OP NO.12135 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the award as published in Kerala Gazette 'I.D.No.148/95' dated 27.11.2001.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 12135 OF 2002 T

Dated this the 19th day of March, 2007

J U D G M E N T

The Management in I.D.No.148 of 1995 before the Labour Court, Ernakulam is the petitioner herein. They are challenging Ext.P1 award of the Labour Court in the said I.D. The issue referred for adjudication was as following:-

> "Whether the denial of employment of Sri.V.P.Hassan, Parcel Agent was justifiable and if not what relief he is entitled ."

The Management admitted that the workman involved namely, the second respondent was actually employed by them. Their contention was that he was only a casual worker engaged by the petitioner for one or two hours each morning, and that thereafter, the second respondent used to run a pan shop for the rest of the day. They also contend that as per Clause 20 of the Standing Orders of the Management company, the superannuation of the age of the employee is 58 years and since the workman had already crossed that age, he is not entitled to any further relief.

2. In Ext.P1 award, the Labour Court found that the Management itself has admitted the employment of the second respondent-workman, and that he has been regularly working with the petitioner. On the evidence before it, the Labour Court came to the conclusion that the workman cannot be characterised as a casual employee under the Management and that he was a workman as defined under Section 2(s) of the Industrial Disputes Act.

3. Thereafter, the Labour Court considered the further contention of the Management that the workman had already crossed the superannuation of age of 58 years. This contention was raised by the Management based on Ext.M1 standing orders of the petitioner-establishment. The Labour Court found that Ext.P1 standing orders came into force after the workman attained the age of 58 years and the Management had no contention that he was re-employed after superannuation. On the other hand, the finding was that he was being engaged continuously without interruption and without being superannuated. In the above circumstances, the Labour Court came to the conclusion that

the Management cannot raise a contention that since the workman had already crossed 58 years, he cannot claim any relief in the I.D. On these findings, the Labour Court held that the workman was denied employment by the management unjustly, but restricted the relief to payment of Rs.25,000/- as compensation in lieu of reinstatement.

4. The contention of the Management is that the finding of fact entered by the Labour Court is perverse. Regarding the question as to whether the workman was a casual employee or a regular employee, the Labour Court found that the definite case of the workman was that he was expected to work at least eight hours every day as against the claim of the Management that he was expected to work for only one or two hours every day. The Labour Court found that, that was not an issue for consideration since the workman was given wages considering the nature and duration of the work performed by him. The Labour Court also noted that the wages of the workman were revised from time to time. In fact, it was admitted before the Labour Court that the workman was being given a salary at the rate of

Rs.250/- per month at the time of his denial of employment. The Labour Court also found that nobody other than the workman was engaged for the discharge of the work which was being done by the workman in question. I do not find anything perverse in the appreciation of evidence by the Labour Court in respect of this issue.

5. The next contention of the Management is that since going by Ext.M1 Standing Orders, since he had already crossed the age of 58 years on the date of his denial of employment, the workman is not entitled to any relief in the I.D.. But the Labour Court found that Ext.M1 standing orders came into force only after the workman attained the age of 58 years. The Management also could not satisfy the Labour Court that any other standing order was in existence prior to Ext.M1. The Labour Court noted that Ext.W1 letter by which the services of the workman were dispensed with did not state that, that order was issued in the light of clause 20 of Ext.M1, which relates to re-employment after superannuation. As per Ext.P1 award, the finding was that there was no fresh appointment of the workman after he

attained the age of 58 years and therefore, the Supreme Court decision reported in **Binoy Kumar Chatterjee** v. **M/s.Jugantar Limited and others** (AIR 1983 SC 865) and the decision of this Court reported in **Kunjumohammed** v. **Chairman** (1993(2) KLT 864) have no application. As such, I do not find any merit in the challenge against the second finding also because there is absolutely nothing perverse in such a finding of fact.

6. I note that even then Labour Court had not ordered reinstatement with back wages which would have been the normal relief to be granted in such cases, but only direct payment of compensation of an amount of Rs.25,000/- in lieu of his reinstatement. I do not think that the relief granted also calls for any interference at the hands of this Court.

In the above circumstances, I do not find any merit in the original petition and accordingly, the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P.NO. 12135 OF 2002 T

J U D G M E N T

DATED:19-03-2007